IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

CWP No. 616 of 2005

Date of decision: 10th January, 2006

Krishan Lal & others **Petitioners**

Versus

Bharat Sanchar Nigam Ltd. & others **Respondents**

Coram:

The Hon'ble Mr.Justice K C Sood,J.

Whether approved for reporting ?[1]

For the Petitioners: **Mr Sanjeev Bhushan, Advocate.**

For the Respondents: **Mr Ratish Sharma, Advocate.**

K C SOOD,J. *(Oral)*

The petitioners are the employees of respondent No.1, Bharat Sanchar Nigam Ltd., a body of the Government of India undertaking.

The grievance of the petitioners is:

They have been transferred from their present place of posting to the hard areas in Himachal Pradesh by the respondents on pick and choose basis.

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment ?***

The petitioners are working as linemen, re-designated as Telecom Mechanics. The respondents do not have any set policy of transfer for its employees. Even though the consistent practice had been to transfer the employees on the basis of their seniority and stay at a particular place, while doing so their earlier places of postings are taken into consideration. It is the further case of the petitioners that all of them have crossed the age of 50 years or about to reach that age. All of them have served the remotest areas of Himachal Pradesh, yet they have been picked up once again to serve in the hard/tribal areas of Himachal Pradesh by the impugned order dated 2nd April, 2005 (Annexure P-2).

The transfers are sought to be set aside, on the grounds that the transfers are illegal, arbitrary and in violation of the Transfer Policy of the respondents. The petitioners have been picked up for transfer, even though there are several similar situate persons working as Telecom Mechanics at various places in Shimla, who have never served out of Shimla, such an action of the respondents is violative of Articles 14 and 16 of the Constitution of India.

The respondents in their return, on the affidavit of the Deputy General Manager, Telecom District Shimla, controvert the allegations. It is denied that the respondents have adopted the pick and choose method for transfer. It is stated that against the justifiable strength of 568 Telecom Mechanics, the Department is working with 321 Telecom Mechanics. According to the respondents, Shimla (Local) is being manned by, disproportionately, excessive strength of Telecom Mechanics, i.e. 105 Telecom Mechanics, whereas Shimla (Local) should be manned by 77 Telecom Mechanics out of the available sanctioned strength of 321. This strength is excess by 36%. It is further case of the respondents that there are several stations, where the ratio of Telecom Mechanics is proportionately much low i.e. Pooh, Reckong Peo and Chopal which are located at a considerable distance from each other. In the above named places, the exchanges are totally unmanned and in case any repair etc. is required, the Telecom Mechanics are sent from nearby exchanges for the purpose. Taking into consideration the consistent policy followed by the department i.e. the Junior Telecom Mechanics should be transferred.

Only 8 Telecom Mechanics, the petitioners, were transferred from highest concentration from Shimla (local) i.e. 3 Telecom Mechanics to Chopal; 1 Telecom Mechanic to Reckong Peo and 4 Telecom Mechanics to Pooh , so that unmanned stations could be properly manned by skilled Telecom Mechanics for providing better service.

It is the case of the respondents that looking to the fact that Shimla had a very high concentration of Telecom Mechanics compared to the stations, where the petitioners have been transferred where there was negligible presence of the Telecom Mechanics the junior most in the cadre with minimum of five years of stay were transferred to the stations in the public interest and exigencies of service.

Heard Mr Sanjeev Bhushan, learned counsel for the petitioners and Mr Ratish Sharma, learned counsel for the respondents.

The petitioners were transferred from Shimla (Local) station to other places, which are described as Hard/Tribal areas by the petitioners, by the impugned order dated 2nd April, 2005 (Annexure P-2). It appears certain complaints, regarding transfers, were made by the employees

Union including the NFTE BSNL. Pursuant to the receipt of the complaints, all the CGMs, of BSNL in the Country were advised that the transfers should not be made on pick and choose basis. The transfer policy followed by the Circle/SSA should be applied uniformly in respect of all the staff employees (Annexure P-1). The distribution of Telecom Mechanics at various sub divisions/stations shows that Shimla(Local), where the petitioners are presently employed, have sanctioned strength of 77, against which 105 Telecom Mechanics are working with 36 in excess, whereas the Reckong Peo, Pooh and Chopal are manned by 52% to 57% of sanctioned strength.

During the pendency of the writ petition, a supplementary affidavit was filed by the respondents, in which detail of the stay of the petitioners in Shimla from where they are transferred is given. It is noticed that in November, 1988 the Government of India in the Department of Telecommunication took a decision that for transfer of surplus staff either from one recruitment unit to another or within the same recruitment unit, seniority would be the only criterion i.e. transfer will be effected starting

from the junior most official in the gradation list. On 21st July, 2005, during the pendency of the writ petition, a formal meeting with the representatives of the Union was held.

Under Item No.32: Transfer Policy for Extreme Hard /Extra Hard/Hard Stations, was considered. The Union maintained that there is no need to classify the stations as extreme hard, extra hard & hard stations. It was reiterated by the Union that while issuing transfer orders, no pick and choose policy should be adopted. SSA Heads should formulate some policy at their own level and effect transfers, according to criteria, decided in the policy and no one who is coming withinin the criteria should be left out.

There is no scope for dispute that the petitioners have been transferred pursuant to the transfer policy decided by the Shimla SSA and only the junior most, namely the petitioners, who had completed 5 years in the SM(P) station were transferred and none was left out arbitrarily.

Annexure R-4 with the Supplementary affidavit shows that the petitioner Balwant Singh was employed on 30th September, 1994 and from the date of his employment, i.e. Ist October, 1994 he

has been posted as Lineman/Telecom Mechanic under the SDO(P) Shimla till date. Similarly, Patti Ram petitioner was stationed at Theog from the date of his recruitment and was posted at Theog upto 7th February, 1997 and w.e.f. 8th February, 1997 he is stationed at Shimla with the SDO(P) Shimla till date. Petitioner Shyam Charan has worked from June, 1990 to June,1997 at Nandpur under SDOT Theog and w.e.f. 4th June, 1997 is stationed at Shimla with the SDO(P) III SM till date. Petitioner Krishan Lal was posted at Thanedar Exchange from October, 1988 to February, 1992 and w.e.f. 10th February, 1992 is posted in Shimla. Hira Singh Petitioner was posted at Solan from August, 1986 to October, 1990 and thereafter he is stationed at Shimla. Petitioner Daulat Ram has worked for two years at Theog and thereafter he was posted at Shimla. Sita Ram petitioner has worked at Solan from September, 1978 to August, 1986 and w.e.f 19th August, 1986 till date he is stationed at Shimla. Dila Ram petitioner has worked since February, 1976 till date in Shimla. Thus, the allegation of the petitioners that they were posted earlier at hard and tribal areas is false.

In para (2) of the supplementary affidavit the respondents have given the details of Telecom Mechanics of Shimla, which show that the petitioners were transferred in accordance with the settled policy. The petitioners are at Sr.No.276, 271,266,265,252,249,242 and 214.

Petitioner No.1 Kishori Lal is at Sr.No.276. He is in Shimla since 1992 for more than 13 years of stay and has now been transferred under the impugned order.

Petitioner No.2 Patti Ram is at Sr.No.271 and is in Shimla for more than 19 years. Petitioner No.3 Hira Singh is at Sr.No.266 and is in Shimla for more than 15 years. Petitioner No.4 Shyam Charan is at Sr.No.265 and is in Shimla for more than 8 years. Petitioner No.5 Dila Ram is at Sr.No.252 and he is in Shimla for more than 19 years. Petitioner No. 6 Daulat Ram is at Sr.No.249 and is in Shimla for more than 23 years. Petitioner No.7 Balwant Singh is at Sr.No. 242 and is in Shimla for more than 11 years. Petitioner No.8 Sita Ram is at Sr.No. 214 and is in Shimla since 1986 about for more than 19 years. None of the petitioners, who has shorter stay than those not transferred has been transferred. The transfers

were made strictly in terms of the Transfer Policy, which was framed in consultation with the Union of the employees. The grievance of the petitioners is without any foundation.

This apart, transfer is incident of service nay condition of service and transfer of an employee unless visited by arbitrary-ness or malafides cannot be interfered with in exercise of jurisdiction, under article 226 of the Constitution of India.

As pointed out by the Apex Court in *Union of India and others versus Janardhan Debanath and another* (2004) 4 Supreme Court Cases 245, the question whether a particular employee could be transferred to a particular station is a matter for the employer to consider depending upon the administrative necessities.

The Apex Court relying upon *National Hydroelectric Power Corporation Ltd. versus Sh. Bhagwan* (2001) 8 SCC 574 in *State of U P and another versus Siya Ram and another* (2004)7 Supreme Court Cases 405 observed that No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place of his choice since transfer of a particular

employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals normally cannot interfere with such orders as a matter of routine as though they were appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned.

The Apex Court in *State of U P and others versus Gobardhan Lal* (2004) 11 Supreme Court Cases 402 took a view that transfer made even in transgression of administrative guidelines cannot be interfered with by the courts, as they do not confer any legally enforceable rights, unless such transfer is shown to be vitiated by mala fides or is made in violation of any statutory provision.

This position was reiterated by the Apex Court in *Kendriya Vidyalaya Sangathan versus Damodar Prasad Pandey and others* (2004) 12 Supreme

Court Cases 299 by observing that who should be transferred and posted where,` is a matter for the administrative authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any operative guidelines, the courts should not ordinarily interfere with it.

By no stretch it can be said that that the transfer of the petitioners is triggered by any malafides or arbitrariness. It is also not in violation of any statutory rule.

No merits.

The petition is dismissed. Interim order, if any, shall stand vacated.

No costs.

January 10,2006 (K C Sood),J.
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